

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID R. FERGUSON,
AN N. HONG,
DANI SULEMAN, and
GREGORY L. WHITTEMORE

Appeal No. 2002-0799
Application No. 08/947,435

ORDER REMANDING TO EXAMINER

MAILED

APR 29 2002

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

A Reply Brief (Paper No. 21) was entered July 9, 2001, in response to an Examiner's Answer (Paper No. 20) entered May 8, 2001.

In accordance with the revision effective December 1, 1997, Title 37, **Code of Federal Regulations**, § 1.193 states:

(b)(1) . . . The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief.

In view of this revision, the examiner must reopen prosecution in order to respond to the Reply Brief (Paper No. 21). Otherwise, if the examiner chooses not to respond to the arguments

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presented in the Reply Brief, the examiner needs to acknowledge receipt and entry of the Reply Brief and withdraw the Supplemental Reply Brief (Paper No. 22).¹

Accordingly, it is

ORDERED that the application is remanded to the examiner for consideration and proper response to Paper No. 20, and for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES



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¹ Listed as "Reply Brief noted" on the CONTENTS portion of the administrative file.